No. 1091

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1970

ELLIOT L. RICHARDSON, Secretary of Health, Education and Welfare,

Appellant

vs.

RAYMOND BELCHER,

Appellee

On Appeal from the United States District Court for the Southern District of West Virginia

BRIEF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE

INTEREST OF THE AMERICAN TRIAL LAWYERS ASSOCIATION

This brief *amicus curiae* is filed by the American Trial Lawyers Association.

The American Trial Lawyers Association ("ATL") is a national association composed of lawyers regularly engaged in the trial and appeal of all types of contested matters (including workmen's compensation cases and social security claims), sitting judges, law professors, lawyer-administrators, and other lawyers, whose membership now numbers over 25,000. This association through its appropriate officers and committees, has authorized its participation in this cause as amicus curiae.

One of the principal functions of ATL and its members is to establish and protect the rights of individuals who have suffered injuries to their persons. The decision of the Court in this cause will have far-reaching effects, not only upon the rights of injured workmen, but also upon the rights of other injured persons whose right to recover compensation for such injuries may be limited by statute. ATL has a strong interest in insuring that such limitations, where necessary and proper, are not arbitrary or discriminatory.

SUMMARY OF ARGUMENT

It is the position of ATL that in the instant case, the District Court correctly held that the reduction of plaintiff's social security disability benefits was unconstitutional as being in violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution, since the statute (Section 224 of the Social Security Act) authorizes such reduction only in the case of a narrow, limited class of persons, namely, those who are simultaneously receiving social security disability benefits and disability payments pursuant to a workmen's compensation award, and such classification is patently arbitrary and lacks any rational justification.

ARGUMENT

The factual background and statutory basis for this litigation are fully discussed in the other briefs and need not be reiterated here. The issue in this case is a simple one: Is § 224 of the Social Security Act (42 U.S.C. § 424a) together with the relevant Department of Health, Education and Welfare regulations promulgated thereunder, invalid by reason of being in conflict with the Fifth Amendment to the United States Constitution?

There can be no question but that the plaintiff in this case is a member of a limited class of persons whose social security disability benefits are subject to reduction. The statute singles out one and only one collateral source of disability compensation to be credited in whole or in part against social security payments – workmen's compensation awards. Only those persons whose disability happens to have arisen from a work-connected injury, who have brought a claim for workmen's compensation against their employer, who have satisfied the notice provisions, limitations, burden of proof, and all other substantive and procedural requirements of the particular state's workmen's compensation law, and finally have received a valid workmen's compensation award, are subject to having their social security disability benefits reduced or terminated.

There are numerous other classes of persons receiving disability compensation payments whose social security benefits are not subject to reduction. These include:

1. **Employees who suffer work-connected injuries but do not make a workmen's compensation claim.** With respect to certain employees, particularly at the management level, the employer may have a policy of

continuing to pay the employee's salary during periods of sickness or injury, or for a specified period of time in the event of total and permanent disability. In such cases, the employee may elect to forego his potential workmen's compensation claim and accept in lieu thereof more favorable wage continuation payments. Such payments do not cause a reduction in social security benefits. Or the employee may threaten to bring a workmen's compensation claim, as a result of which the employer may settle with the employee by agreeing to some sort of wage continuation plan. This is particularly likely where the employer is a self-insurer with respect to workmen's compensation. See, *e.g.*, W. Va. Code Ann. 23-2-9 (1970). Again, such payments do not cause a reduction in social security benefits.

2. **Employees who suffer work-connected injuries while employed by an employer not covered by workmen's compensation.** In many states, including West Virginia, some or all employers may elect not to come under the provisions of the workmen's compensation act.[1] As to the employers who so elect, their employees' injuries may be compensated by some form of private wage continuation plan, employer-funded disability income insurance, or the proceeds of a tort action against the employer. In such cases, any benefit received by the injured employee does not cause a reduction in his social security benefits.

3. **Self-employed persons who suffer work-connected injuries.** Persons who are self-employed commonly purchase disability income insurance, since they are not covered by workmen's compensation. Payments received from such insurance do not cause a reduction in social security benefits, even where the injury is work-related.

4. **Persons whose disability did not arise during the course and scope of their employment.** Many employers have wage continuation plans - - formal and informal - - for disabled employees which are provided even where the disability did not arise out of the employment. Payments under such plans,

1. Twenty-three states, including West Virginia, permit employers to elect not to come within the workmen's compensation system. 3 Larson, Law of Workmen's Compensation 522, Appendix A, Table 7 (1971); W. Va. Code Ann., § 23-2-1, 23-2-8 (1970).

whether employer- or insurance-funded, do not reduce social security benefits. Further, many persons voluntarily purchase disability income insurance to provide for the situation where the disability does not arise out of their employment. While such insurance commonly is limited by its terms to 80% or 100% of the employee's highest wages, there is typically no offset for social security disability benefits, and payments received pursuant to such an insurance contract do not reduce the individual's social security benefits.

5. **Persons whose disability arises from injuries caused by a third party.** Many persons are rendered disabled by the negligence of some one other than his employer or co-employees. In any judgment or settlement received by the person disabled as a result of a tort claim against the third-party tortfeasor, one of the elements of damages is lost wages, past and future. Such damages are not subject to reduction by reason of collateral benefits[2] such as social security, and under the Social Security Act, the judgment or settlement does not cause a reduction in social security benefits.

In all of the foregoing situations, (and undoubtedly other examples could be found), an individual receives some form of wage continuation or disability income *in addition* to social security disability payments and which do not cause his social security payments to be diminished. Section 224 of the Social Security Act singles out only one specific type of collateral source benefit -- payments pursuant to a workmen's compensation award -- to serve as an offset against social security benefits. Unquestionably, Section 224 is discriminatory, and on its face such discrimination must be deemed arbitrary and unjustifiable.

The Fifth Amendment to the United States Constitution provides, in part:

> "No person shall . . . be deprived of . . . property, without due process of law; . . . ."

This Court has previously ruled that benefits under the Social Security Act are subject to the provisions of the Due Process Clause, and may not be arbitrarily and unjustifiably withheld. *Flemming v. Nestor,* 363 U.S. 603, 611, 80 Sup. Ct. 1367, 1373 (1960). Although the particular provision of the statute questioned in that case was held *not* to violate the Due Process Clause, this Court stated:

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2. Except that in most states, whoever pays the workmen's compensation award is entitled to be reimbursed out of any tort judgment or settlement recovered from a third party. See 2 Larson, Law of Workmen's Compensation 74.31, pp. 226.105-226.118 (1970).

> "This is not to say, however, that Congress may exercise its power to modify the statutory scheme free of all constitutional restraint. The interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause . . . . Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as this, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification."

See also *Shapiro v. Thompson*, 394 U.S. 618, 641-42, 89 Sup. Ct. 1322, 1335 (1969) (District of Columbia welfare benefits withheld in violation of Due Process Clause); *Schneider v. Rusk*, 377 U.S. 163, 168, 84 Sup. Ct 1187, 1190 (1964) (Fifth Amendment prohibits unjustifiable and arbitrary discrimination in act of Congress); *Bolling v. Sharpe*, 347 U.S. 497, 499, 74 Sup. Ct. 693, 694 (1954) (same). *Cf. Goldberg v. Kelly*, 397 U.S. 254, 90 Sup. Ct. 1011, 1017 (1970) (welfare benefits as "property").

The question is, then, is there any rational justification for the discrimination which is apparent in Section 224 of the Social Security Act?

Clearly, there is no difference of any substance between the disability income payments in any of the examples noted above and payments pursuant to a workmen's compensation award, either in source or quality. Workmen's compensation is paid for by the employer, either directly or through the purchase of insurance. It is a part of the cost of labor. Similarly, the work-connected disability income payments in most of the examples given above are funded either by the employer or by the employee himself. Presumably, if paid for by the employee (through the purchase of insurance), the cost is reflected in the wages paid to the employee, since the employer who does not provide this fringe benefit must pay extra wages to be competitive. Of the examples given, only payments pursuant to a third-party tort judgment or settlement are not funded by the employer or employee, and there is no basis for a distinction between workmen's compensation awards and such tort judgments or settlements vis-a-vis the reduction of social security benefits.

Furthermore, there is no reason to assume that workmen's compensation awards will be larger than the disability income benefits described in the examples above so as to justify different treatment under the Social Security Act. In fact, if anything, payments in the examples given above are apt to be larger than workmen's compensation benefits, since they are not subject to the limitation of a statutory payment schedule as in the case of workmen's compensation.

The Government in this case has not suggested any plausible rationale for the discrimination contained in Section 224. Indeed, there is only one conceivable reason for singling out workmen's compensation awards to offset social security payments - - administrative convenience of enforcement. Workmen's compensation awards are ordinarily matters of public record. The Social Security Administration can obtain from the states or court records information as to the identity of those receiving workmen's compensation and the amount of their award. Other forms of disability income payments, including most of those listed in the examples given above, are not matters of public record or would not be so easily discovered.

But administrative convenience is not a proper rationale for a statutory provision which discriminates against a narrow class of beneficiaries and favors all other classes similarly situated. Congress has said that social security disability benefits shall be *primary* as to all classes of persons *except* those who also happen to qualify for and receive workmen's compensation awards, and as to them and them alone social security shall be *secondary*, much like so-called "other insurance." This it cannot constitutionally do.

We do not suggest that Congress could not validly reduce social security payments *pro tanto* to the extent of benefits received from other sources. But in order to be valid, such reduction should encompass substantially *all forms of disability income*, regardless of the particular statute, plan or contract by which such income is paid.

Moreover, a statute providing for *all* forms of disability income to reduce social security benefits would present no unique problems of administrative enforcement. For example, an application for social security disability benefits could simply require the applicant to disclose all other sources of disability income, much as our tax laws now require voluntary disclosure of all taxable income. This disclosure requirement could be made a continuing one. Penalties could be provided for failure to make such disclosure, including forfeiture of social security benefits. In any event, the Government cannot justify such clear discrimination on the ground that a broader offset provision would be more difficult to enforce. Indeed, its briefs do not attempt to do so.

It is suggested in the briefs that one justification for Section 224 is that its purpose is to encourage rehabilitation and to discourage malingering. If that is true, and assuming that it will in fact have that effect, then as we

have previously shown it does not go far enough. There is no basis for assuming that those receiving workmen's compensation are more likely to malinger, or less likely to seek rehabilitation, than persons receiving disability income from any other source. In fact, the opposite may be true, since many workmen's compensation systems and insurers have rehabilitation programs which are not available to persons receiving disability income from other sources. See, *e.g.*, W. Va. Code Ann. 23-4-9 (1970). In any event, if the policy of the statute is to encourage rehabilitation, there remains no justification for applying that policy only to a narrow class of disabled persons.

The Government also suggests that a possible purpose and effect of Section 224 is to protect state workmen's compensation systems, since if social security disability benefits are primary, states may amend their workmen's compensation acts to shift the burden of a disabled worker's compensation to the social security system. Upon examination, however, this rationale also fails. In the first place, the states could do that under the present act if they wished to do so. There is nothing to prevent a state from making its workmen's compensation benefits begin where social security leaves off, making the maximum total disability benefit equal to the eighty percent limitation of Section 224. Thus, Section 224 does nothing to effectuate any such policy. In the second place, payments for total and permanent disability are only a small part of the total scheme of compensation of any workmen's compensation act. Benefits are also provided for medical and hospital expenses, funeral expenses, rehabilitation, specific scheduled losses, temporary total disability, permanent partial disability, and other forms of loss,[3] all of which are unaffected by social security. Obviously, predictions of the demise of the state workmen's compensation systems in the absence of Section 224 are grossly exaggerated.

Finally, it is argued that a purpose of Section 224 is to prevent double payments for the same loss. If by this is meant double payments from public funds, the premise fails. Workmen's compensation is funded either by private insurance or by payments by the employer to a state agency, which acts merely as a depositary or conduit. Social security itself is financed primarily through payments from participating employers and employees. Public funds are not involved. Moreover, as we have previously shown, Section 224 acts only upon one narrow class of persons receiving

3. See, *e.g.*, W. Va. Code Ann., 23-4-3, 23-4-4, 23-4-6 (1970).

disability income from a collateral source. Social security may duplicate disability income received from any other source. There is no justification for a policy which limits its effect to this one particular group.

The conclusion is inescapable that there is no valid basis for Section 224. Clearly, the statute "manifests a patently arbitrary classification, utterly lacking in rational justification." *Flemming v. Nestor*, 363 U.S. 603, 611, 80 Sup. Ct. 1367, 1373 (1960). As such, it is in violation of the Due Process Clause and unconstitutional.

CONCLUSION

For the foregoing reasons, the American Trial Lawyers Association respectfully urges that the judgment of the United States District Court for the Southern District of West Virginia be affirmed.

Respectfully submitted,

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RICHARDSON, SECRETARY OF HEALTH, EDUCATION, AND WELFARE *v.* BELCHER

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

No. 70–53. Argued October 13, 1971—Decided November 22, 1971

Section 224 of the Social Security Act, which requires a reduction in social security benefits to reflect workmen's compensation payments, has a rational basis and does not violate the Due Process Clause of the Fifth Amendment.

317 F. Supp. 1294, reversed.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE and BLACKMUN, JJ., joined. DOUGLAS, J., filed a dissenting opinion, *post*, p. 84. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined, *post*, p. 88.

Richard B. Stone argued the cause for appellant. With him on the brief were *Solicitor General Griswold, Assistant Attorney General Gray,* and *Kathryn H. Baldwin.*

John Charles Harris argued the cause and filed a brief for appellee.

William E. Miller and *Richard A. Whiting* filed a brief for the American Mutual Insurance Alliance et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed by *Edward J. Kionka* for the American Trial Lawyers Association, and by *Edward L. Carey, Harrison Combs,* and *M. E. Boiarsky* for United Mine Workers of America.

MR. JUSTICE STEWART delivered the opinion of the Court.

The appellee was granted social security disability benefits effective in October 1968, in the amount of $329.70 per month for himself and his family. In January 1969, the federal payment was reduced to $225.30

monthly under the "offset" provision of Section 224 of the Social Security Act, 79 Stat. 406, 42 U. S. C. § 424a,[1] upon a finding that the appellee was receiving workmen's compensation benefits from the State of West Virginia in the amount of $203.60 per month. After exhausting his administrative remedies, the appellee brought this action challenging the reduction of payments required by § 224 on the ground that the statutory provision deprived him of the due process of law guaranteed

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[1] Section 224 provides, in pertinent part:

"(a) If for any month prior to the month in which an individual attains the age of 62—

"(1) such individual is entitled to benefits under section 423 of this title, and

"(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent), and the Secretary has, in a prior month, received notice of such entitlement for such month,

"the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

"(3) such total of benefits under sections 423 and 402 of this title for such month, and

"(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan,

"exceeds the higher of—

"(5) 80 percentum of his 'average current earnings.' . . .

"For purposes of clause (5), an individual's average current earnings means the larger of (A) the average monthly wage used for purposes of computing his benefits under section 423 of this title, or (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409 (a) and 411 (b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest. . . ." 42 U. S. C. § 424a (a).

by the Fifth Amendment. The District Judge, disagreeing with other courts that have considered the question,[2] held the statute unconstitutional. 317 F. Supp. 1294. The Secretary of the Department of Health, Education, and Welfare appealed directly to this Court under 28 U. S. C. § 1252.[3] We noted probable jurisdiction, 401 U. S. 935, and the case was briefed and argued on the merits. We now reverse the judgment of the District Court.

In our last consideration of a challenge to the constitutionality of a classification created under the Social Security Act, we held that "a person covered by the Act has not such a right in benefit payments as would make every defeasance of 'accrued' interests violative of the Due Process Clause of the Fifth Amendment." *Flemming* v. *Nestor*, 363 U. S. 603, 611. The fact that social security benefits are financed in part by taxes on an employee's wages does not in itself limit the power of Congress to fix the levels of benefits under the Act or the conditions upon which they may be paid. Nor does an expectation interest in public benefits confer a contractual right to receive the expected amounts. Our decision in *Goldberg* v. *Kelly*, 397 U. S. 254, upon which

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[2] *E. g.*, *Gambill* v. *Finch*, 309 F. Supp. 1 (ED Tenn. 1970); *Lofty* v. *Cohen*, 325 F. Supp. 285, aff'd *sub nom. Lofty* v. *Richardson*, 440 F. 2d 1144 (CA6 1971); *Bartley* v. *Finch*, 311 F. Supp. 876 (ED Ky. 1970); *Bailey* v. *Finch*, 312 F. Supp. 918 (ND Miss. 1970); *Benjamin* v. *Finch*, Civ. No. 32816, ED Mich., May 26, 1970, aff'd *sub nom. Benjamin* v. *Richardson*, No. 20,714, CA6, Apr. 29, 1971; *Gooch* v. *Finch*, Civ. No. 6840, SD Ohio, July 13, 1970; *Rodatz* v. *Finch*, Civ. No. 69–170, ED Ill., Sept. 4, 1970, aff'd *sub nom. Rodatz* v. *Richardson*, — F. 2d — (CA7 1971).

[3] "Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States . . . , holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party."

the District Court relied, held that as a matter of procedural due process the interest of a welfare recipient in the continued payment of benefits is sufficiently fundamental to prohibit the termination of those benefits without a prior evidentiary hearing. But there is no controversy over procedure in the present case, and the analogy drawn in *Goldberg* between social welfare and "property," 397 U. S., at 262 n. 8, cannot be stretched to impose a constitutional limitation on the power of Congress to make substantive changes in the law of entitlement to public benefits.

To characterize an Act of Congress as conferring a "public benefit" does not, of course, immunize it from scrutiny under the Fifth Amendment. We have held that "[t]he interest of a covered employee under the [Social Security] Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause." *Flemming* v. *Nestor, supra,* at 611. The appellee argues that the classification embodied in § 224 is arbitrary because it discriminates between those disabled employees who receive workmen's compensation and those who receive compensation from private insurance or from tort claim awards. We cannot say that this difference in treatment is constitutionally invalid.

A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is "rationally based and free from invidious discrimination." *Dandridge* v. *Williams,* 397 U. S. 471, 487. While the present case, involving as it does a federal statute, does not directly implicate the Fourteenth Amendment's Equal Protection Clause, a classification that meets the test articulated in *Dandridge* is perforce consistent with the due process requirement of the Fifth Amendment. Cf. *Bolling* v. *Sharpe,* 347 U. S. 497, 499.

To find a rational basis for the classification created by § 224, we need go no further than the reasoning of Congress as reflected in the legislative history. The predecessor of § 224, enacted in 1956 along with the amendments first establishing the federal disability insurance program, required a full offset of state or federal[4] workmen's compensation payments against benefits payable under federal disability insurance: 70 Stat. 816. It is self-evident that the offset reflected a judgment by Congress that the workmen's compensation and disability insurance programs in certain instances served a common purpose, and that the workmen's compensation programs should take precedence in the area of overlap. The provision was repealed in 1958, 72 Stat. 1025, because Congress believed that "the danger that duplication of disability benefits might produce undesirable results [was] not of sufficient importance to justify reduction of the social security disability benefits." H. R. Rep. No. 2288, 85th Cong., 2d Sess., p. 13.

In response to renewed criticism of the overlap between the workmen's compensation and the social security disability insurance programs, Congress re-examined the problem in 1965. Data submitted to the legislative committees showed that in 35 of the 50 States, a typical worker injured in the course of his employment and eligible for both state and federal benefits received compensation for his disability in excess of his take-home pay

[4] The primary federal workmen's compensation programs are the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U. S. C. § 901 *et seq.*, applicable to employees in the District of Columbia and in maritime-related occupations, and the Federal Employees' Compensation Act, 80 Stat. 532, 5 U. S. C. § 8101 *et seq.*, applicable to employees of the Federal Government. The overwhelming majority of workers in the United States are covered by state rather than federal programs, and thus we may refer generally to workmen's compensation as a program of the States.

prior to the disability. Hearings on H. R. 6675 before the Senate Committee on Finance, 89th Cong., 1st Sess., pt. 2, p. 904. It was strongly urged that this situation reduced the incentive of the worker to return to the job, and impeded the rehabilitative efforts of the state programs. Furthermore, it was anticipated that a perpetuation of the duplication in benefits might lead to the erosion of the workmen's compensation programs.[5] The legislative response was § 224, which, by limiting total state and federal benefits to 80% of the employee's average earnings prior to the disability, reduced the duplication inherent in the programs and at the same time allowed a supplement to workmen's compensation where the state payments were inadequate.

The District Court apparently assumed that the only basis for the classification established by § 224 lay in the characterization of workmen's compensation as a "public benefit." Because the state program was financed by employer contributions rather than by taxes, the Court held that the "public" characterization afforded no rational basis to distinguish workmen's compensation from private insurance. We agree that a statutory discrimination between two like classes cannot be rationalized by assigning them different labels, but neither can two unlike classes be made indistinguishable by attaching to them a common label. The original purpose of state workmen's compensation laws was to satisfy a need in-

[5] The Senate Committee on Finance, with which the 1965 amendment originated, took note of "the concern that has been expressed by many witnesses in the hearings about the payment of disability benefits concurrently with benefits payable under State workmen's compensation programs." S. Rep. No. 404, 89th Cong., 1st Sess., pt. 1, p. 100. Testimony concerning the anticipated effects of duplication upon the future of the state programs appears in Hearings on H. R. 6675 before the Senate Committee on Finance, 89th Cong., 1st Sess., pt. 1, pp. 252, 259, 366, pt. 2, pp. 540, 738–740, 892–897, 949–954, 990.

adequately met by private insurance or tort claim awards. Congress could rationally conclude that this need should continue to be met primarily by the States, and that a federal program that began to duplicate the efforts of the States might lead to the gradual weakening or atrophy of the state programs.

We have no occasion, within our limited function under the Constitution, to consider whether the legitimate purposes of Congress might have been better served by applying the same offset to recipients of private insurance, or to judge for ourselves whether the apprehensions of Congress were justified by the facts. If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment.

The judgment is

Reversed.

MR. JUSTICE DOUGLAS, dissenting.

I would affirm the judgment of the District Court. The statutory classification upheld today is not "rationally based and free from invidious discrimination." *Dandridge* v. *Williams*, 397 U. S. 471, 487. It is, in my view, violative of the Federal Government's obligation under the Fifth Amendment's Due Process Clause to guarantee to all citizens equal protection of the laws. *Bolling* v. *Sharpe*, 347 U. S. 497.

Eligibility for social security disability benefits is premised upon a worker's having attained "insured" status in the course of an employment "covered" by the Act. It is undisputed that Raymond Belcher, and through him his wife and two minor children, had so qualified in 1968 when he broke his neck while employed by the Pocahontas Fuel Co. in Lynco, West Virginia. Indeed, his application for such benefits has been approved, and the benefits authorized and paid.

Section 224 of the Social Security Act, however, requires that these benefits be substantially reduced solely because Belcher also receives state workmen's compensation payments. It is said that the duplication of benefits impedes rehabilitation, and may lead to a cutting back of state workmen's compensation programs. *Ante*, at 83.

The rehabilitation goal does not explain the special treatment given to workmen's compensation beneficiaries. There are many other important programs, both public and private, which contain provisions for disability payments affecting a substantial portion of the work force, and which do not require an offset under the Social Security Act.

Thus, had Belcher's supplemental disability payment come from a Veterans' Administration program,[1] a Civil Service Retirement Act[2] or Railroad Retirement Act[3]

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[1] In fiscal 1970, over 2,000,000 veterans received compensation for service-connected disabilities under statutes administered by the Veterans' Administration. Statistical Abstract of the United States 264 (1971) (hereinafter cited as Statistical Abstract). See generally 38 U. S. C. § 301 *et seq.* Benefits are also provided to certain veterans for non-service-connected disabilities. See generally 38 U. S. C. § 501 *et seq.* In 1967, total disability benefits from all Veterans' Administration programs amounted to $3,197,906,000. Berkowitz & Johnson, Towards An Economics of Disability: The Magnitude and Structure of Transfer and Medical Costs, 5 J. Human Resources 271, 282 (1970) (hereinafter cited as Economics of Disability). Raymond Belcher indicated on his application for social security disability benefits that he served for three years during World War II. Transcript of Hearings before Appeals Council 37. The record is silent, however, as to his potential eligibility for non-service-connected veteran's benefits.

[2] Employees covered by the Civil Service Retirement Act, 5 U. S. C. § 8301 *et seq.*, are entitled to a disability annuity after five years of civilian service. *Id.*, § 8337. In fiscal 1970, there were 184,000 disabled annuitants. Statistical Abstract 284.

[3] Title 45 U. S. C. § 228a *et seq.* provides disability benefits for railroad workers with 10 or more years of covered service. Covered

annuity, a private disability insurance policy,[4] a self-insurer,[5] a voluntary wage-continuation plan, or the proceeds in an action in tort arising from the disabling injury, there would have been no reduction in his social security benefits. The offset under § 224 applies only to federal social security disability beneficiaries also receiving workmen's compensation payments, a group which in 1965 totaled only 1.4% of all social security disability bene-

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employment under this Act and the Civil Service Retirement Act is excluded from coverage under the Social Security Act. If, however, a worker's employment history separately qualifies him for dual coverage, supplemental payments under neither of these Acts results in an offset of social security disability payments. HEW publication, Social Security Programs in the United States 46, 108 (1968) (hereinafter cited as Programs).

[4] Participation in West Virginia's state workmen's compensation fund is optional with the employer. W. Va. Code Ann. §§ 23-2-1, 23-2-8 (1970). An employer who declines to participate, however, must provide equivalent benefits through private insurance or as a self-insurer. *Id.*, at § 23-2-9. Had the Pocahontas Fuel Co. elected to pay premiums to a private carrier rather than to the state fund—a decision over which Mr. Belcher presumably had no control other than that which might be exerted through the collective-bargaining process—the private insurance benefits would not have been offset under § 224. Over 26,000,000 employees are covered by some sort of private insurance program. Programs 115. In 1967, disability benefits from private insurance amounted to 1.3 billion dollars. Economics of Disability 278. This figure alone exceeded the total of all benefits paid by workmen's compensation programs for that year. *Ibid.*

[5] Were Mr. Belcher's employer large enough, it might have determined to become a self-insurer with respect to employee disability claims. Disability payments from self-insurers were required by state law to be at least equivalent to benefits available through the state fund, n. 3, *supra*, and they would also not be offset under § 224. In 1969, employers who were covered by private carriers and who were self-insurers paid a combined total of $2,008,000,000 in benefits. State and federal workmen's compensation funds paid only $604,000,000 in benefits. Statistical Abstract 289.

ficiaries.[6] Yet, of the 849,000 disabled workers who in 1965 received social security disability benefits,[7] over *sixteen* percent also received overlapping veteran's benefits,[8] and almost *fourteen* percent received benefits from private insurance maintained under the auspices of an employer or a union.[9] Congress is, of course, not required to address itself to all aspects of a social problem in its legislation. It must, however, justify the distinctions it draws between people otherwise similarly situated. Rehabilitation incentives are not a rational justification for the discrimination worked by § 224.[10] If it is at all rational to argue that duplicating payments "impede rehabilitation," the argument must apply to all such payments regardless of their source. The nature of the supplemental benefit has no relation to a worker's incentive to return to work.

Nor is § 224 designed to stem a possible "erosion" of state workmen's compensation plans. As MR. JUSTICE MARSHALL points out, *post*, at 94, § 224 itself provides that there shall be no reduction of federal social security benefits with respect to those state workmen's compensation plans which themselves offset federal social security

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[6] 1966 Survey of Disabled Adults, Office of Research & Statistics, Social Security Administration, Table 5 (hereinafter cited as Survey). This figure was confirmed during the hearings which led to the adoption of § 224 by Anthony J. Celebrezze, then Secretary of the Department of Health, Education, and Welfare. Hearings on H. R. 6675, before the Senate Committee on Finance, 89th Cong., 1st Sess., pt. 1, p. 152.

[7] Survey, Table 5.

[8] *Ibid.*

[9] *Ibid.*

[10] Assuming the rationality of rehabilitation as a goal with respect to temporary disabilities, there is still no justification for applying an offset with respect to disabilities concededly permanent in nature. Nevertheless, the statute requires this to be done. The record does not reveal the status of Mr. Belcher's disability.